

REMARKS

Applicant respectfully requests reconsideration and allowance of all of the claims of the application. The status of the claims is as follows:

- Claims 1-51, 53, 54, 56-62, 64-75, and 77-82 were pending.
- Claims 1, 19, 32-45, and 82 are amended herein.
- Claims 1-51, 53, 54, 56-62, 64-75, and 77-82 are currently pending.

Support for the amendments to the claims is found in the specification, as originally filed, at least at page 4, lines 2-3 and in the claims as originally filed. The amendments submitted herein do not introduce any new matter.

Cited Documents

The following documents have been applied to reject one or more claims of the Application:

- **Watkins:** Watkins, U.S. Patent No. 6,442,331
- **Fleming:** Fleming, III et al., U.S. Patent No. 6,973,461

Claims 1-51, 53, 54, 56-62, 64-75, and 77-82 are Non-Obvious Over Watkins in view of Fleming

Claims 1-51, 53, 54, 56-62, 64-75, and 77-82 stand rejected under 35 U.S.C. § 103(a) as allegedly being obvious over Watkins in view of Fleming. Applicant respectfully traverses the rejection.

Independent Claim 1

Claim 1, as amended herein, recites:

A method implemented on a device by a processing unit configured to execute computer-executable instructions that, when executed by the processing unit, direct the device to perform acts comprising:

obtaining audio/video data from a disc;

presenting the audio/video data to a user;

obtaining executable software instructions from the disc;

receiving an input from the user; and

executing, in response to the input, the executable software instructions to determine how to enhance presentation of the audio/video data to the user, wherein executing the executable software instructions comprises:

identifying a temporal location of the audio/video data currently being played back;

identifying programmatic data corresponding to the identified temporal location; and

enhancing a presentation of the audio/video data by processing the identified programmatic data by executing the executable software instructions.

Applicant submits that the combination of Watkins and Flemming does not teach or suggest features of claim 1 for at least two reasons.

First, claim 1 recites “*obtaining executable software instructions from the disc.*” The Office asserts that column 6, lines 7-16 of Watkins teaches this feature. See Office Action at p. 3. The Office provides no evidence or arguments that Fleming teaches this feature, and thus, the entire basis of rejection for this feature comes from Watkins.

The cited portion of Watkins, with emphasis added, is reproduced below.

Optical disk system 10 also includes a microprocessor (μ P) 22 which controls the operations of the various components of optical disk system 10. Microprocessor 22 executes **software instructions stored within a microprocessor (μ P) memory unit 24** coupled to microprocessor 22. For example, microprocessor 22 may execute instructions of a real time operating system (RTOS) stored within microprocessor memory unit 24. Microprocessor 22 may also execute **instructions of 3-D application software stored within microprocessor memory unit 24**, thereby forming a 3-D "engine".

Watkins merely describes a microprocessor memory unit that stores software instructions. See Watkins, column 6, lines 7-16. Also, Fig. 1 of Watkins clearly shows the microprocessor memory unit 24 as separate and distinct from the disk drive unit 12.

Fig. 2 of Watkins shows a DVD-compliant bitstream. This bitstream is discussed in column 7, lines 50-60 of Watkins which is cited below, with emphasis added:

FIG. 2 is a diagram of a DVD-compliant bitstream 40 including **an SPU [sub-picture unit] portion 42**. SPU portion 42 is a grouping or "packet" of data having **a data portion 48**, **a header portion 46**, and **a control portion 44**. Header portion 46 includes a value indicating the length of the data packet, and data portion 48 includes the 3-D presentation data. The object formed from the 3-D presentation data is to be displayed within a portion or "window" defined within the boundaries of the display screen of display device 34. Control portion 44 of the SPU data packet may define the size and location of the window as well as a display start time.

Watkins does not describe the SPU portion, the data portion, the header portion, or the control portion of the bitstream as containing executable software instructions. According, neither the cited portion nor any other portion of Watkins teaches or suggests "*obtaining executable software instructions from the disc,*" as presently recited in claim 1.

Second, the combination of Watkins and Fleming does not teach or suggest "*enhancing a presentation of the audio/video data by processing the identified programmatic data by executing the executable software instructions,*" as is also

presently recited in claim 1. After a review of the documents cited by the Office, Applicant asserts that none of the cited documents disclose the above features as presently recited in claim 1.

Specifically, the Office relies on column 6, lines 7-16 and column 7, lines 50-60 of Watkins to allegedly disclose “enhancing a presentation of the audio/video data by using the identified programmatic data associated with the disc as determined by executing the one or more instruction of the set of executable software instruction.” See Office Action at p. 3. The cited portions of Watkins are reproduced above. The Office provides no evidence or arguments that Fleming teaches these features.

However, Watkins merely describes an “object formed from the 3-D presentation data [that] is to be displayed within a portion or ‘window’ defined within the boundaries of the display screen of display device 34.” See Watkins at column 7, lines 55-58. Even assuming *arguendo* that the 3-D presentation can be properly analogized to “*enhancing a presentation of the audio/video data*” nothing in Watkins teaches or suggests creating this enhancement “*by processing the identified programmatic data by executing the executable software instructions.*” At best Watkins describes a “Microprocessor 22 [which] may also execute instructions of 3-D application software stored within microprocessor memory unit.” See Watkins at column 6, lines 14-17. Watkins is silent regarding any relationship between the instructions of the 3-D application software from column 6 and the object formed from the 3-D presentation data from column 7. A microprocessor that may execute instructions and an object formed from 3-D presentation data, as discussed in Watkins, do not teach or suggest “*enhancing a presentation of the audio/video data by processing the identified*

programmatic data by executing the executable software instructions,” as presently recited in claim 1.

For at least the reasons presented herein, the combination of Watkins and Fleming does not teach or suggest all of the features of claim 1. Accordingly, Applicant respectfully requests that the Office withdraw the § 103 rejection of this claim.

Independent Claim 7

The Office does not specifically address claim 7, but rather rejects claim 7 for the same reason as claim 1. See Office Action at p. 5. However, claim 7 recites in part “*obtaining, from the source, a set of executable instructions associated with the audio/video data, wherein **the set of executable instructions are loaded by the playback device when the source is initially accessible to the playback device.***” This feature is not found in claim 1.

By failing to address the features recited in claim 7 the Office has failed to establish a *prima facie* case of unpatentability.

“All words in a claim must be considered in judging the patentability of that claim against the prior art.” *In re Wilson*, 424 F.2d 1382, 1385, (CCPA 1970). When determining whether a claim is obvious, an examiner must make “a searching comparison of the claimed invention – **including all its limitations** – with the teaching of the prior art.” *In re Ochiai*, 71 F.3d 1565, 1572 (Fed. Cir. 1995; emphasis added).

Moreover, the MPEP states as follows: “the examiner bears the initial burden, on review of the prior art or on any other ground, of presenting a *prima facie* case of unpatentability. If that burden is met, the burden of coming forward with evidence or argument shifts to the applicant. . . . If examination at the initial stage does not produce

a *prima facie* case of unpatentability, then without more the applicant is entitled to grant of the patent.” MPEP §2107 (citing *In re Oetiker*, 977 F.2d 1443, 1445, 24 U.S.P.Q.2d 1443, 1444 (Fed. Cir. 1992)); *In Re Glaug*, 283 F.3d 1335, 62 USPQ2d 1151 (Fed. Cir. 2002) (“During patent examination the PTO bears the initial burden of presenting a *prima facie* case of unpatentability. *In re Oetiker*, 977 F.2d 1443, 1445, 24 U.S.P.Q.2d 1443, 1444 (Fed. Cir. 1992); *In re Piasecki*, 745 F.2d 1468, 1472, 223 U.S.P.Q. 785, 788 (Fed. Cir. 1984). If the PTO fails to meet this burden, then the applicant is entitled to the patent.”).

Given that It is not possible to establish a *prima facie* case of unpatentability until the record shows that the Office has considered all the words in a claim, and that the Applicant is entitled to a patent on all claims for which the Office has not established a *prima facie* case of unpatentability, Applicant respectfully requests allowance of this claim.

Independent Claim 19

The Office rejects claim 19 for the same reason as claim 1. See Office Action at p. 8. However, for at least reasons similar to those discussed above with respect to claim 1, the combination of Watkins and Fleming does not teach or suggest every feature of this claim. For example, Watkins and Fleming fails to teach or suggest at least the amended features: “*executing the set of instructions by the processing unit, wherein executing the set of that instructions causes the device to process the associated programmatic data for a portion of the stream of the audio/video data,*” as presently recited in claim 19.

Therefore, the combination of Watkins and Fleming does not teach or suggest all of the features of claim 19. Accordingly, Applicant respectfully requests that the Office withdraw the § 103 rejection of this claim

Independent Claim 32

The Office rejects claim 32 for the same reason as claim 1. See Office Action at p. 8. However, for at least reasons similar to those discussed above with respect to claim 1, the combination of Watkins and Fleming does not teach or suggest every feature of this claim. For example, Watkins and Fleming fails to teach or suggest at least the amended features: *“enhance a presentation of the current portion of the audio/video content by executing the set of instructions, wherein executing the set of instructions causes the one or more processors to process the programmatic data to enhance the presentation of the current portion of the audio/video content,”* as presently recited in claim 32.

Therefore, the combination of Watkins and Fleming does not teach or suggest all of the features of claim 32. Accordingly, Applicant respectfully requests that the Office withdraw the § 103 rejection of this claim

Independent Claim 36

The Office rejects claim 36 for the same reason as claim 1. See Office Action at p. 9. However, the combination of Watkins and Fleming does not teach or suggest every feature of this claim for at least two reasons.

First, Watkins and Fleming fails to teach or suggest at least *“a second portion containing programmatic data, wherein temporal location identifiers from the audio data*

and video data identify a portion of the programmatic data that is associated programmatic data for a portion of the audio data and video data,” as recited in amended claim 36. The Office relies on column 7, lines 50-60 of Watkins to provide “a temporal location.” See Office Action at p. 3. The Office provides no evidence or arguments that Fleming teaches this feature. The cited portion of Watkins merely discusses “a display start time.” Watkins at column 7, line 60. The Office provides no reasons as to why a display start time may be properly interpreted as the “*temporal location identifiers*” having the features recited in claim 36.

Second, Watkins and Fleming fails to teach or suggest at least “*a third portion containing a plurality of instructions for processing the associated programmatic data, wherein the plurality of instructions, when executed, cause processing of the associated programmatic data based on the temporal location identifiers,*” as recited in amended claim 36. The Office relies on column 7, lines 50-60 of Watkins to provide “programmatic data corresponding to the identified temporal location.” See Office Action at p. 3. The Office provides no evidence or arguments that Fleming teaches this feature. The cited portion of Watkins merely discusses “an SPU portion...a data portion... a header portion... and a control portion 44.” Watkins at column 7, lines 51-53. The Office provides no reasons as to why the “portions” discussed in Watkins may be properly interpreted as a “*plurality of instructions, [that] when executed, cause processing of the associated programmatic data based on the temporal location identifiers,*” as recited in claim 36.

Therefore, the combination of Watkins and Fleming does not teach or suggest all of the features of claim 36. Accordingly, Applicant respectfully requests that the Office withdraw the § 103 rejection of this claim

Independent Claim 45

The Office does not specifically address claim 45, but rather rejects claim 45 for the same reason as claim 1. See Office Action at p. 9. However, claim 45 recites in part “*responsive to an input from the user, executing a set of instructions by the processing unit of the playback device in conjunction with playing back the audio/video data, wherein **the instructions are loaded by the playback device when the audio/video content is initially accessible to the playback device.***” This feature is not found in claim 1.

By failing to address the features recited in claim 45 the Office has failed to establish a *prima facie* case of unpatentability for the reasons shown above in the discussion of claim 7.

Given that It is not possible to establish a *prima facie* case of unpatentability until the record shows that the Office has considered all the words in a claim, and that the Applicant is entitled to a patent on all claims for which the Office has not established a *prima facie* case of unpatentability, Applicant respectfully requests allowance of this claim.

Independent Claim 47

The Office does not specifically address claim 47, but rather rejects claim 47 for the same reasons as claims 1 and 11-12. See Office Action at p. 9. The Office fails to

provide sufficient factual basis for supporting a *prima facie* case of unpatentability for at least two reason.

First, claim 47 recites in part:

*executing, by the processing unit, a set of executable instructions that causes processing of the programmatic data to **create an HDTV (High Definition TV) version of a video of the audio/video content by adding additional detail based on the programmatic data.***

The Office acknowledges in the rejection of claim 11 that the combination of Watkins and Fleming fail to disclose this feature. See Office Action at p. 6. Although objective evidence supporting this ground of rejection is not found in the cited documents, the Office takes official notice that “both the concept and the advantage of the view of HDTV version of video data is well known and expected in the art.” Office Action at p. 6. Applicant notes that this assertion is a mere conclusory statement without any supporting reasoning as to why these features are allegedly well known.

The appropriate standard for rejections relying on statements of facts that are allegedly “well known” in the prior art is discussed in MPEP §2144.03. “As noted by the court in *In re Ahlert*, 424 F.2d 1088, 1091, 165 USPQ 418, 420 (CCPA 1970), the notice of facts beyond the record which may be taken by the examiner must be “capable of such instant and unquestionable demonstration as to defy dispute” (citing *In re Knapp Monarch Co.*, 296 F.2d 230, 132 USPQ 6 (CCPA 1961)).... It would not be appropriate for the examiner to take official notice of facts without citing a prior art reference where the facts asserted to be well known are not capable of instant and unquestionable demonstration as being well-known.

Even assuming *arguendo* that HDTV versions of video data are well known, this alone does not support a *prima facie* case of obviousness of the features recited in claim 47. Of all the conceivable ways to create an HDTV version of video content, the Office provides no arguments or evidence why it would be well known to execute “a set of executable instructions that causes processing of the programmatic data to create an HDTV (High Definition TV) version of a video of the audio/video content by adding additional detail based on the programmatic data,” as recited in claim 47. In contrast, the failure of Watkins and/or Fleming to directly teach or even indirectly suggest this technique for creating HDTV content indicates that it would not be obvious or well known. Since the Office asserts that the combination of these documents teaches executable instructions that causes processing of programmatic data, the failure of these documents to teach or suggest creating HDTV content as well as the absence of any explanation by the Office why these allegedly well known features are not suggested by the cited documents precludes a finding that these features are well known.

If the Office wishes to maintain this rejection, Applicant respectfully requests that the Office provide objective evidence in the record supporting those facts of which the Office has taken official notice. “If Applicant Challenges a Factual Assertion as Not Properly Officially Noticed or Not Properly Based Upon Common Knowledge, the Examiner Must Support the Finding With Adequate Evidence.” MPEP §2144.04(C).

Second, claim 47 recites in further part “*the programmatic data comprises: additional information describing **regions of the HDTV version absent from the***

audio/video content due to an aspect ratio difference between the video of the audio/video content and the HDTV version.

The Office acknowledges in the rejection of claim 12 that the combination of Watkins and Fleming fail to disclose “wherein the enhancing comprises converting the video data of the audio/video data to a different aspect ratio.” Office Action at p. 6. Although objective evidence supporting this grounds of rejection is not found in the cited documents, the Office takes official notice that “both the concept and the advantage of converting the video data of the audio/video data to a different aspect ratio is well known and expected in the art.” Office Action at p. 6. Applicant notes that this assertion is a mere conclusory statement without any supporting reasoning as to why these features are allegedly well known.

Even assuming *arguendo* that converting video to different aspect ratios is well known, this alone does not support a *prima facie* case of obviousness of the features recited in claim 47. Of all the conceivable ways to modify an aspect ratio of video content, the Office provides no arguments or evidence why it would be well known to do so with “*programmatic data [that] comprises: additional information describing regions of the HDTV version absent from the audio/video content due to an aspect ratio difference between the video of the audio/video content and the HDTV version,*” as recited in claim 47. In contrast, the failure of Watkins and/or Fleming to directly teach or even indirectly suggest changing aspect ratios indicates that it would not be obvious or well known. Since the Office asserts that the combination of these documents teaches executable instructions that causes processing of programmatic data, the failure of these documents to teach or suggest programmatic data used as described in claim 47

to change an aspect ratio as well as the absence of any explanation by the Office why these allegedly well known features are not suggested by the cited documents precludes a finding that these features are well known.

If the Office wishes to maintain this rejection, Applicant respectfully requests that the Office provide objective evidence in the record supporting those facts of which the Office has taken official notice. “If Applicant Challenges a Factual Assertion as Not Properly Officially Noticed or Not Properly Based Upon Common Knowledge, the Examiner Must Support the Finding With Adequate Evidence.” MPEP §2144.04(C).

Therefore, for at least the above reasons, the Office has not made sufficient factual findings to support a prima facie case of unpatentability of claim 47. Accordingly, Applicant respectfully requests that the Office withdraw the § 103 rejection of this claim

Independent Claim 49

Claim 49 recites:

A method implemented on a device by a processing unit configured to execute computer-executable instructions that, when executed by the processing unit, direct the device to perform acts comprising:

obtaining audio/video content having a first aspect ratio to be presented to a user;

obtaining programmatic data associated with the audio/video content, wherein the programmatic data includes additional data and adds additional details to the audio/video data and temporal location identifiers from a stream of the audio/video content identify associated programmatic data; and

executing, by the processing unit, a set of instructions that use the programmatic data to convert the video of the audio/video

content from the first aspect ratio to a second aspect ratio having at least one dimension smaller than the first aspect ratio by removing at least one of rows of pixels or columns of pixels from the audio/video content, wherein the programmatic data identifies which rows of pixels or columns of pixels to remove for each image of a video track of the audio/video content.

The Office acknowledges that the combination of Watkins and Fleming fail to disclose:

executing, by the processing unit, a set of instructions that use the programmatic data to convert the video of the audio/video content from the first aspect ratio to a second aspect ratio having at least one dimension smaller than the first aspect ratio by removing at least one of rows of pixels or columns of pixels from the audio/video content, wherein the programmatic data identifies which rows of pixels or columns of pixels to remove for each image of a video track of the audio/video content.

Office Action at p. 9

The Office takes official notice that:

both the concept and the advantage of converting the video data of the audio/video data to a different aspect ratio, having at least one dimension smaller than the first aspect ration [ratio] by removing at least one of rows of pixels or columns of pixels from the audio/video content, wherein the programmatic data identifies which row of pixels or columns of pixels to remove for each image of a video track of the audio/video contents [is] well known and expected in the art.

Office Action at p. 10.

Initially, Applicant notes that although objective evidence supporting this ground of rejection is acknowledged as absent from the cited documents, the Office takes official notice to support a rejection of more than half (86 of 168 words) of claim 49. It is **never appropriate** to rely solely on common knowledge in the art without evidentiary support in the record as the **principal evidence** upon which a rejection was based. *See Zurko*,

258 F.3d at 1386, 59 USPQ2d at 1697; *Ahlert*, 424 F.2d at 1092, 165 USPQ 421; emphasis added. Applicant also notes that the assertion by the Office is a mere conclusory statement without any supporting reasoning as to why these features are allegedly well known.

The appropriate standard for rejections relying on statements of facts that are allegedly “well known” in the prior art is discussed in MPEP §2144.03. “As noted by the court in *In re Ahlert*, 424 F.2d 1088, 1091, 165 USPQ 418, 420 (CCPA 1970), the notice of facts beyond the record which may be taken by the examiner must be “capable of such instant and unquestionable demonstration as to defy dispute” (citing *In re Knapp Monarch Co.*, 296 F.2d 230, 132 USPQ 6 (CCPA 1961)).... It would not be appropriate for the examiner to take official notice of facts without citing a prior art reference where the facts asserted to be well known are not capable of instant and unquestionable demonstration as being well-known.

Even assuming *arguendo* that it is well known convert video data to different aspect ratios, this alone does not support a *prima facie* case of obviousness of the features recited in claim 49. For example, one technique for altering aspect ratios may involve merely removing the edges (top-bottom and/or left-right) to the same degree in each frame of video. However, claim 49 recites in part “*removing at least one of rows of pixels or columns of pixels from the audio/video content, wherein the **programmatic data identifies which rows of pixels or columns of pixels to remove for each image.***” The concept of programmatic data identifying what to remove for each image is a specific technical and arguably esoteric technique of which it is not proper to take official notice. Assertions of technical facts in the areas of esoteric technology or

specific knowledge of the prior art must always be supported by citation to some reference work recognized as standard in the pertinent art. *In re Ahlert*, 424 F.2d at 1091, 165 USPQ at 420-21.

If the Office wishes to maintain this rejection, Applicant respectfully requests that the Office provide objective evidence in the record supporting those facts of which the Office has taken official notice. “If Applicant Challenges a Factual Assertion as Not Properly Officially Noticed or Not Properly Based Upon Common Knowledge, the Examiner Must Support the Finding With Adequate Evidence.” MPEP §2144.04(C).

Therefore, for at least the above reasons, the Office has not made sufficient factual findings to support a prima facie case of unpatentability of claim 49. Accordingly, Applicant respectfully requests that the Office withdraw the § 103 rejection of this claim

Independent Claim 51

The Office does not specifically address claim 51, but rather rejects claim 51 for the same reasons as claims 1 and 13. See Office Action at p. 10. However, claim 51 recites in part “*executing, by the processing unit, a set of instructions that use the programmatic data to incorporate popup information into video content of the audio/video content, wherein the popup information overlays the audio/video content and comprises **descriptions of items displayed as part of the audio/video content that overlay the video content and a link that, when selected by the user, allows the user to purchase an item being displayed as part of the audio/video content.***” This feature is not found in claim 1 or 13.

By failing to address the features recited in claim 51 the Office has failed to establish a *prima facie* case of unpatentability for the reasons shown above in the discussion of claim 7.

Given that It is not possible to establish a *prima facie* case of unpatentability until the record shows that the Office has considered all the words in a claim, and that the Applicant is entitled to a patent on all claims for which the Office has not established a *prima facie* case of unpatentability, Applicant respectfully requests allowance of this claim.

Independent Claim 57

The Office does not specifically address claim 57, but rather rejects claim 57 for the same reasons as claim 51 which is rejected for the same reason as claims 1 and 13. See Office Action at pp. 10-11. However, claim 57 recites in part:

*executing, by the processing unit, a set of instructions associated with the unique identifier, wherein **the instructions when executed, cause the programmatic data to display popup information when playback of the audio/video content is paused; and storing an association between the unique identifier and the set of instructions in a memory of the content player.***

These features are not found in claim 1 or 13.

By failing to address the features recited in claim 57 the Office has failed to establish a *prima facie* case of unpatentability for the reasons shown above in the discussion of claim 7.

Given that It is not possible to establish a *prima facie* case of unpatentability until the record shows that the Office has considered all the words in a claim, and that the

Applicant is entitled to a patent on all claims for which the Office has not established a *prima facie* case of unpatentability, Applicant respectfully requests allowance of this claim.

Independent Claim 62

The Office does not specifically address claim 62, but rather rejects claim 62 for the same reasons as claim 1. See Office Action at p. 11. However, claim 62 recites in part:

*the programmatic data comprises **data identifying important scenes** of the audio/video content **that are important to a plot of the audio/video content**; and executing a set of instructions that, when executed, **present, to the user, the important scenes of the audio/video content as identified by the programmatic data, wherein the device scans through the important scenes in response to a user request.***

These features are not found in claim 1.

By failing to address the features recited in claim 62 the Office has failed to establish a *prima facie* case of unpatentability for the reasons shown above in the discussion of claim 7.

Given that It is not possible to establish a *prima facie* case of unpatentability until the record shows that the Office has considered all the words in a claim, and that the Applicant is entitled to a patent on all claims for which the Office has not established a *prima facie* case of unpatentability, Applicant respectfully requests allowance of this claim.

Independent Claim 69

The Office does not specifically address claim 69, but rather rejects claim 69 for the same reasons as claim 62 which is rejected for the same reasons as claim 1. See Office Action at p. 12. However, claim 69 recites in part:

*the programmatic data comprises **data identifying important scenes of the audio/video content that are important to a plot of the audio/video content**; and executing a set of instructions that, when executed by the processing unit, **present, to the user, a summary of the important scenes of the audio/video content as identified by the programmatic data up to a particular point in the audio/video content.***

These features are not found in claim 1.

By failing to address the features recited in claim 69 the Office has failed to establish a *prima facie* case of unpatentability for the reasons shown above in the discussion of claim 7.

Given that It is not possible to establish a *prima facie* case of unpatentability until the record shows that the Office has considered all the words in a claim, and that the Applicant is entitled to a patent on all claims for which the Office has not established a *prima facie* case of unpatentability, Applicant respectfully requests allowance of this claim.

Independent Claim 73

The Office does not specifically address claim 73, but rather rejects claim 73 for the same reasons as claim 56 which is rejected for the same reasons as claim 51 which is rejected for the same reasons as claims 1 and 13. See Office Action at pp. 10-12. In

rejecting claim 56, the Office cites to column 5, line 56 of Watkins. See Office Action at p. 11. The cited portion of Watkins discusses an “Optical disk system 10 [that] also includes an audio/video.”

However, claim 73 recites in part:

*executing a set of instructions that, when executed by the processing unit, present, to the user, **additional episodic content associated with the audio/video content**, wherein the programmatic data identifies the additional episodic content; and*
charging a fee for access to the additional episodic content.

These features are not found in any claims 1, 13, 51, or 56.

By failing to address the features recited in claim 69 the Office has failed to establish a *prima facie* case of unpatentability for the reasons shown above in the discussion of claim 7.

Given that It is not possible to establish a *prima facie* case of unpatentability until the record shows that the Office has considered all the words in a claim, and that the Applicant is entitled to a patent on all claims for which the Office has not established a *prima facie* case of unpatentability, Applicant respectfully requests allowance of this claim.

Independent Claim 78

The Office does not specifically address claim 78, but rather rejects claim 78 for the same reason as claim 7 which is rejected for the same reason as claim 1. See Office Action at pp. 5 and 13. However, claim 78 recites in part “*enhance a playback of the audio/video content by adding the programmatic data to the audio/video content,*

wherein **the programmatic data and the audio/video content are part of a same data stream received from a same source.**” This feature is not found in claims 1 or 7.

By failing to address the features recited in claim 45 the Office has failed to establish a *prima facie* case of unpatentability for the reasons shown above in the discussion of claim 7.

Given that It is not possible to establish a *prima facie* case of unpatentability until the record shows that the Office has considered all the words in a claim, and that the Applicant is entitled to a patent on all claims for which the Office has not established a *prima facie* case of unpatentability, Applicant respectfully requests allowance of this claim.

Dependent Claims 2-5, 8-18 ,20-31, 33-35, 37-44, 48, 50, 53, 54, 56, 58-61, 64-68, 70-72, 74, 75, 77, 79-82

Claims 2-5, 8-18 ,20-31, 33-35, 37-44, 48, 50, 53, 54, 56, 58-61, 64-68, 70-72, 74, 75, 77, and 79-82 ultimately depend from one of independent claims 1, 7, 19, 32, 36, 45, 47, 49, 51, 57, 62, 69, 73, or 78. As discussed above, claims 1, 7, 19, 32, 36, 45, 47, 49, 51, 57, 62, 69, 73, and 78 are allowable over the cited documents. Therefore, claims 2-5, 8-18 ,20-31, 33-35, 37-44, 48, 50, 53, 54, 56, 58-61, 64-68, 70-72, 74, 75, 77, 79-82 are also allowable over the cited documents of record for at least their dependency from an allowable base claim, and also for the additional features that each recites.

Accordingly, Applicant respectfully requests that the Office withdraw the § 103 rejection of claims 2-5, 8-18 ,20-31, 33-35, 37-44, 48, 50, 53, 54, 56, 58-61, 64-68, 70-72, 74, 75, 77, 79-82.

Conclusion

For at least the foregoing reasons, all pending claims are in condition for allowance. Applicant respectfully requests reconsideration and prompt issuance of the application. If any issues remain that would prevent allowance of this application, **Applicant requests that the Examiner contact the undersigned representative before issuing a subsequent Action.**

Respectfully Submitted,

Lee & Hayes, PLLC
Representative for Applicant

/Benjamin Keim, 59,217/

Dated: January 12, 2011

Benjamin A. Keim
(benjamink@leehayes.com; 509-944-4748)
Registration No. 59,217

Kayla D. Brant
(kayla@leehayes.com; 509-944-4742)
Registration No. 46,576